

**TRUSTEES OF THE HOTEL EMPLOYEES AND RESTAURANT EMPLOYEES  
INTERNATIONAL UNION PENSION FUND**

**v.**  
**2<sup>ND</sup> AVENUE DELICATESSEN, INCORPORATED, et al.**

**06 Civ. 6254 (RLC) (DFE)**

**ENDORSEMENT**

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 8/7/09

Plaintiff Trustees of the Hotel Employees and Restaurant Employees International Union Pension Fund instituted this action against Defendants 2<sup>nd</sup> Avenue Delicatessen, Inc., and Lower East Side Finest, Inc., (together, "Defendants") for monies due for failure to remit withdrawal liability payments to the Trustees of the Hotel Employees and Restaurant Employees International Pension Fund as required by the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1132, 1145 and 1451.

Defendants failed to answer the summons and complaint, filed on August 17, 2006. Plaintiff moved for a default judgment on May 15, 2007, and the court referred the matter to Magistrate Judge Douglas F. Eaton for an inquest. On July 20, 2007, Plaintiff filed a memorandum of law and a declaration in support of an inquest.

On March 20, 2009, Judge Eaton submitted his Report and Recommendation ("R&R"). In his R&R, Judge Eaton recommended entry of a default judgment in favor of Plaintiff, against 2<sup>nd</sup> Avenue Delicatessen, Inc. and Lower East Side Finest, Inc., jointly and severally, in the total amount of \$223,678.28, calculated as follows: (a) unpaid withdrawal liability of \$135,909.81; (b) liquidated damages of 20%, namely \$27,181.96; (c) interest on the \$135,909.81 at the contractual rate of 12% per annum from January 25, 2006, through April 25, 2009; (d) attorneys' fees in the amount of \$6,870.00; and (e) litigation costs in the amount of \$711.69.

As of the date of this endorsement, no objections to the R&R have been filed.

Accordingly, the R&R is adopted as the opinion and judgment of the court. For substantially the same reasons cited in the R&R, it is the judgment of the court that Defendants, jointly and severally, are ordered to pay a total judgment of \$223,678.28.

**IT IS SO ORDERED.**

Date: New York, NY  
August 7, 2009



Robert L. Carter  
U.S.D.J.